

112TH CONGRESS
1ST SESSION

H. R. 2958

To provide a short-term disability insurance program for Federal employees for disabilities that are not work-related, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 15, 2011

Ms. NORTON introduced the following bill; which was referred to the Committee on Oversight and Government Reform

A BILL

To provide a short-term disability insurance program for Federal employees for disabilities that are not work-related, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Federal Employee
5 Short-Term Disability Insurance Act of 2011”.

6 **SEC. 2. PURPOSE.**

7 The purpose of this Act is to offer voluntary insur-
8 ance to Federal employees for protection against the loss
9 of pay resulting from—

10 (1) short-term injury or disability;

1 (2) short-term leave taken for the purpose of
2 caring for a family member;

3 (3) the birth of a child of such an employee; or

4 (4) making arrangements to adopt a child or to
5 become a foster parent.

6 **SEC. 3. NON-WORK RELATED DISABILITY INSURANCE.**

7 (a) IN GENERAL.—Title 5, United States Code, is
8 amended by inserting after chapter 87 the following:

9 **“CHAPTER 88—NON-WORK RELATED**
10 **SHORT-TERM DISABILITY INSURANCE**

“Sec.

“8801. Definitions.

“8802. Availability of insurance.

“8803. Contracting authority.

“8804. Benefits.

“8805. Premiums.

“8806. Preemption.

“8807. Studies, reports, and audits.

“8808. Jurisdiction of courts.

“8809. Administrative functions.

“8810. Cost accounting standards.

11 **“§ 8801. Definitions**

12 “For purposes of this chapter—

13 “(1) the term ‘Director’ means the Director of
14 the Office of Personnel Management;

15 “(2) the term ‘employee’ means—

16 “(A) an employee defined in section
17 8901(1); and

18 “(B) an officer or employee of the United
19 States Postal Service or of the Postal Regu-
20 latory Commission;

1 “(3) the term ‘injury or disability’, with respect
2 to an employee, means that such employee is unable
3 to perform the essential functions of such employee’s
4 position of employment with the Federal Govern-
5 ment;

6 “(4) the term ‘member of family’ has the mean-
7 ing given such term in section 8901(5);

8 “(5) the term ‘carrier’ means an insurance
9 company that is licensed to issue disability insurance
10 in all States, taking into account any subsidiaries or
11 affiliates of such a company; and

12 “(6) the term ‘State’ includes the District of
13 Columbia.

14 **“§ 8802. Availability of insurance**

15 “(a) The Director shall establish and administer a
16 program to make insurance coverage available under this
17 chapter—

18 “(1) for an injury or disability not covered
19 under chapter 81;

20 “(2) for leave to care for, or leave to make ar-
21 rangements to care for, a member of family, includ-
22 ing the birth of a son or a daughter; and

23 “(3) for leave to make arrangements—

24 “(A) to become a foster parent; or

25 “(B) to adopt a child.

1 “(b) Insurance shall not be available under this chap-
2 ter if the injury or disability of an employee is—

3 “(1) caused by willful misconduct of such em-
4 ployee;

5 “(2) caused by such employee’s intention to
6 bring about such injury or disability to himself or to
7 another individual; or

8 “(3) proximately caused by the intoxication of
9 such employee.

10 “(c) In addition to the requirements otherwise appli-
11 cable under section 8801(5), an insurance contract under
12 this chapter must be fully insured, whether through rein-
13 surance with other carriers or otherwise.

14 **“§ 8803. Contracting authority**

15 “(a) The Director shall, without regard to any statute
16 requiring competitive bidding, contract with one or more
17 carriers for a policy or policies of disability insurance as
18 described under this chapter. The Director shall ensure
19 that each resulting contract is awarded on the basis of
20 contractor qualifications, price, and reasonable competi-
21 tion.

22 “(b)(1) Each contract under this section shall con-
23 tain—

1 “(A) a detailed statement of the benefits of-
2 ferred (including any maximums, limitations, exclu-
3 sions, and other definitions of benefits);

4 “(B) the premiums charged (including any limi-
5 tations or other conditions on their subsequent ad-
6 justment);

7 “(C) the duration of the enrollment period; and

8 “(D) such other terms and conditions (includ-
9 ing procedures for establishing eligibility for insur-
10 ance under this chapter) as may be determined by
11 the Director, consistent with the requirements of
12 this chapter.

13 “(2) Premiums charged under a contract under this
14 section shall reasonably and equitably reflect the cost of
15 the benefits provided, as determined by the Director.

16 “(c)(1) Each contract under this section shall require
17 the carrier—

18 “(A) to provide payments or benefits described
19 in section 8804(c) to an employee if such employee
20 is entitled thereto under the terms of the contract;
21 and

22 “(B) with respect to disputes regarding claims
23 for payments or benefits under the terms of the con-
24 tract—

1 “(i) to establish internal procedures de-
2 signed to resolve such disputes expeditiously;
3 and

4 “(ii) to establish, for disputes not resolved
5 through procedures under clause (i), procedures
6 for one or more alternative means of dispute
7 resolution involving independent third-party re-
8 view under circumstances acceptable to the Di-
9 rector.

10 “(2) The carrier’s determination as to whether or not
11 a particular employee is eligible to obtain insurance cov-
12 erage under this chapter shall be subject to review to the
13 extent and in the manner provided in the applicable con-
14 tract.

15 “(3) Nothing in this chapter shall be considered to
16 grant authority for a third-party reviewer to change the
17 terms of any contract under this chapter.

18 “(d)(1) Each contract under this section shall be for
19 a term of not less than 3 years and not greater than 7
20 years, and may be terminated earlier than the termination
21 date of such contract by the Director in accordance with
22 the terms of such contract. However, the rights and re-
23 sponsibilities of the enrolled employee, the insurer, and the
24 Director under each contract shall continue with respect
25 to such employee until the termination of coverage of the

1 enrolled employee or the effective date of a successor con-
2 tract.

3 “(2) A contract described in paragraph (1) may be
4 made automatically renewable, for a term of 1 year each
5 January 1, unless written notice of non-renewal is given
6 either by the Director or the carrier not less than 180
7 days before the renewal date, or unless modified by mutual
8 agreement.

9 “(3) A contract described in paragraph (1) shall in-
10 clude such provisions as may be necessary to ensure that,
11 once an employee becomes duly enrolled, insurance cov-
12 erage pursuant to that enrollment shall be terminated only
13 if the individual is separated from Federal service or,
14 where appropriate, for non-payment of premiums.

15 **“§ 8804. Benefits**

16 “(a) The Director may prescribe reasonable minimum
17 standards for benefit plans offered under this chapter.

18 “(b)(1) Benefits provided to an employee under this
19 chapter shall offset other benefits received by such em-
20 ployee for the same injury or disability, leave to care for
21 or make arrangements to care for a member of family (in-
22 cluding the birth of a son or a daughter), or leave to make
23 arrangements to adopt a child or become a foster parent
24 including worker’s compensation and disability retirement
25 income.

1 “(2) A contract providing benefits under this chap-
2 ter—

3 “(A) shall not provide for a preexisting condi-
4 tion exclusion; and

5 “(B) shall not charge higher premiums, deny
6 coverage, or drop coverage of an employee with a
7 preexisting condition.

8 “(3) A contract providing benefits under this chapter
9 shall provide incentives for an employee who is receiving
10 benefits under such contract to return to work.

11 “(c)(1) For each instance that such employee suffers
12 an injury or disability, takes leave to care for or make
13 arrangements to care for a member of family (including
14 the birth of a son or a daughter), or takes leave to make
15 arrangements to adopt a child or become a foster parent,
16 and is eligible for benefits under this chapter, such em-
17 ployee may receive benefits under this chapter for a period
18 not to exceed 12 months beginning on the date on which
19 such employee qualifies for such benefits. An employee
20 shall receive such benefits after the expiration of the wait-
21 ing period selected by such employee under paragraph
22 (2)(A). The amount of benefits shall be equal to the lesser
23 of—

1 “(A) 70 percent of the annual rate of pay, ex-
2 cluding bonuses, of an employee at the time of the
3 injury or disability of such employee occurs; or

4 “(B) 70 percent of the maximum rate of basic
5 pay provided for grade GS–15 of the General Sched-
6 ule.

7 “(2)(A) The period for which benefits are payable to
8 an employee under this subsection shall begin after the
9 completion of a waiting period, subject to the requirement
10 in subparagraph (C). An employee shall elect one of the
11 following waiting period options:

12 “(i) On the 8th day of continuous injury or dis-
13 ability, leave to care for or to make arrangements to
14 care for a member of family (including the birth of
15 a son or a daughter), or leave to make arrangements
16 to adopt a child or become a foster parent.

17 “(ii) On the 31st day of continuous disability,
18 leave to care for or to make arrangements to care
19 for a member of family (including the birth of a son
20 or a daughter), or leave to make arrangements to
21 adopt a child or become a foster parent.

22 “(iii) On the 91st day of continuous disability,
23 leave to care for or to make arrangements to care
24 for a member of family (including the birth of a son

1 or a daughter), or leave to make arrangements to
2 adopt a child or become a foster parent.

3 “(iv) On the 181st day of continuous disability,
4 leave to care for or to make arrangements to care
5 for a member of family (including the birth of a son
6 or a daughter), or leave to make arrangements to
7 adopt a child or become a foster parent.

8 “(B) An employee who elects to receive benefits ear-
9 lier shall pay a higher premium.

10 “(C) A waiting period selected under subparagraph
11 (A) shall begin on the first day of an employee’s injury
12 or disability.

13 **“§ 8805. Premiums**

14 “(a) Each eligible individual obtaining insurance cov-
15 erage under this chapter shall be responsible for 100 per-
16 cent of the premiums for such coverage.

17 “(b) The amount necessary to pay the premiums for
18 enrollment shall be withheld from the pay of the enrolled
19 individual.

20 “(c) The carrier participating under this chapter
21 shall maintain records that permit it to account for all
22 amounts received under this chapter (including investment
23 earnings on those amounts) separate and apart from all
24 other funds.

1 “(d)(1)(A) The Employees’ Life Insurance Fund is
2 available, without fiscal year limitation, for reasonable ex-
3 penses incurred in administering this chapter before the
4 start of the first term described in section 8803(d)(1), in-
5 cluding reasonable implementation costs.

6 “(B) Such Fund shall be reimbursed, before the end
7 of the first year of a contract described in section
8 8803(d)(1), for all amounts obligated or expended under
9 subparagraph (A) (including lost investment income). Re-
10 imbursement under this subparagraph shall be made by
11 the carrier in accordance with applicable provisions in-
12 cluded in the relevant contract.

13 “(C)(i) There is hereby established in the Employees’
14 Life Insurance Fund a Non-Work Related Disability In-
15 surance Administrative Account, which shall be available
16 to the Office of Personnel Management, without fiscal
17 year limitation, to defray reasonable expenses incurred by
18 the Office in administering this chapter after the start of
19 the first term described in section 8803(d)(1).

20 “(ii) A contract under this chapter shall include ap-
21 propriate provisions under which the carrier involved shall,
22 during each year, make such periodic contributions to the
23 Non-Work Related Disability Insurance Administrative
24 Account as necessary to ensure that the reasonable antici-
25 pated expenses of the Office of Personnel Management in

1 administering this chapter during such year (adjusted to
2 reconcile for any earlier overestimates or underestimates
3 under this subparagraph) are defrayed.

4 “(e) Nothing in this chapter shall, in the case of an
5 enrolled individual applying for an extension of insurance
6 coverage under this chapter after the expiration of such
7 enrolled individual’s first opportunity to enroll, preclude
8 the application of underwriting standards for later enroll-
9 ment.

10 **“§ 8806. Preemption**

11 “(a) The terms of any contract under this chapter
12 which relate to the nature, provision, or extent of coverage
13 or benefits (including payments with respect to benefits)
14 shall supersede and preempt any State, territorial, tribal,
15 or local law, or any regulation issued thereunder, which
16 relates to non-work related disability insurance or con-
17 tracts.

18 “(b)(1) No tax, fee, or other monetary payment may
19 be imposed or collected, directly or indirectly, by any
20 State, territory, tribe, or locality, or by any political sub-
21 division or other governmental authority thereof, on, or
22 with respect to, any premium paid for an insurance policy
23 under this chapter.

24 “(2) Paragraph (1) shall not be construed to exempt
25 any company or other entity issuing a policy of insurance

1 under this chapter from the imposition, payment, or collec-
2 tion of a tax, fee, or other monetary payment on the net
3 income or profit accruing to or realized by such entity
4 from business conducted under this chapter, if that tax,
5 fee, or payment is applicable to a broad range of business
6 activity.

7 “(c) No law of a State, territory, tribe, or locality,
8 pertaining to subrogation or reimbursement with respect
9 to benefits provided under this chapter, shall operate ex-
10 cept as expressly adopted by the Director.

11 **“§ 8807. Studies, reports, and audits**

12 “(a) A contract under this chapter shall contain pro-
13 visions requiring the carrier to furnish such reasonable re-
14 ports as the Director determines to be necessary to enable
15 the Director to carry out the Director’s functions under
16 this chapter.

17 “(b) Each Federal agency shall keep such records,
18 make such certifications, and furnish the Director, the
19 carrier, or both, with such information and reports as the
20 Director may require.

21 “(c) The Director shall conduct periodic reviews of
22 each plan under this chapter to ensure its competitiveness.

23 **“§ 8808. Jurisdiction of courts**

24 “The district courts of the United States have origi-
25 nal jurisdiction, concurrent with the United States Court

1 of Federal Claims, of a civil action or claim against the
2 United States under this chapter after such administrative
3 remedies as required under section 8803(c) have been ex-
4 hausted, but only to the extent judicial review is not pre-
5 cluded by any dispute resolution or other remedy under
6 this chapter.

7 **“§ 8809. Administrative functions**

8 “(a)(1) Except as otherwise provided in this chapter,
9 the Director shall prescribe regulations necessary to carry
10 out this chapter and to make arrangements as necessary
11 with other agencies and payroll systems to implement the
12 program.

13 “(2) Except as otherwise provided by law, the Direc-
14 tor shall specify in regulation the treatment of time spent
15 by an individual in receipt of benefits under this chapter
16 for the purposes of periodic increases in pay, retention
17 purposes, and other rights, benefits, and conditions of em-
18 ployment for which length of service is a factor.

19 “(b) The carrier shall provide for periodic coordinated
20 enrollment, promotion, and education efforts, as specified
21 by the Director.

22 **“§ 8810. Cost accounting standards**

23 “The cost accounting standards issued pursuant to
24 section 1502 of title 41 shall not apply with respect to
25 an insurance contract under this chapter.”.

1 (b) CONFORMING AMENDMENT.—Section 1005(f) of
2 title 39, United States Code, is amended by inserting
3 “88,” after “87,”.

4 (c) CLERICAL AMENDMENT.—The analysis for part
5 III of title 5, United States Code, is amended by adding
6 at the end of subpart G the following:

“88. Non-Work Related Short-Term Disability Insurance 8801”.

7 (d) DATE OF APPLICATION.—The amendment made
8 by subsection (a) shall apply to contracts that take effect
9 with respect to the first calendar year that begins more
10 than 18 months after the date of enactment of this sec-
11 tion.

○